The Los Angeles Bar Association

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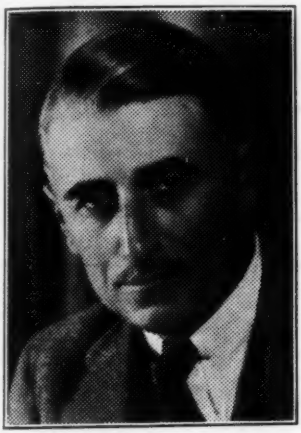
PRESIDENT WRIGHT SUBMITS PROGRAM FOR BAR'S WORK DURING THE YEAR



LOYD WRIGHT
President

PLANS for a broad program of constructive work by the Los Angeles Bar Association for the coming year were submitted to the members at the meeting held at the University Club for the induction of new officers on February 27. President Loyd Wright, having served for eight years as an officer and trustee, took over the duties as head of the Association, succeeding Mr. Edward D. Lyman, whose administration will be long remembered for its undertakings and accomplishments for the promotion of justice and the maintenance of high standards of practice.

President Wright, in outlining his plans for the consideration of the members, laid particular stress upon the influence the organized Bar, local, state and national, may exert, through proper activities, to meet the problems on which the public is entitled to the advice of the Bar. Weekly luncheon meetings are planned, in order to give opportunities for members to express themselves on problems of the law, and to hear such problems discussed by specialists in particular branches of practice. Social meetings, combined with golf, are to be held on the third Friday of each month at one of the country clubs, when golf-playing members will have the privilege of playing for the same green fees paid by members of the club, while others may engage in bridge and other games. Buffet luncheons may be enjoyed at the club, and dinner, too, if desired.

INFLUENCE BAR MAY EXERT

"I believe that one of the most potent influences the bar can exert," said President Wright, "is through local associations such as ours. I am a firm believer in the American Bar Association and in the State Bar, but I am convinced that, notwithstanding the great work these organizations are doing, our association and similar associations throughout the country must now meet the problems and carry on at least until the national and state bodies are in position to shoulder the whole load.

"I believe that we have, in the past, been guilty of failing to participate in certain activities, because of the prohibition in our constitution that we shall not take part in partisan politics. I do not advocate that we should ever take part in partisan politics. On the other hand, I believe that in matters in the field of law and the administration of justice, and any other matters which otherwise are proper subjects of our interest and activity, we should not withhold our judgment and counsel merely because some aspect of the problem seems to be political.

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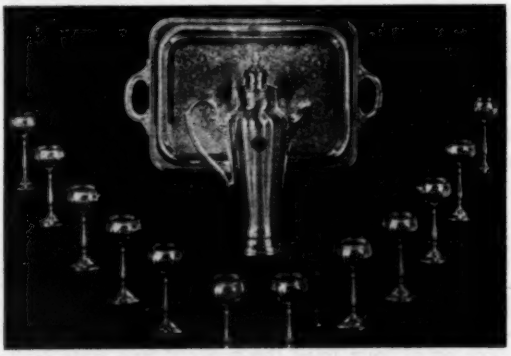
SOCIAL MEETINGS AND GOLF

IN order that the members of the Association may become better acquainted, and to encourage social meetings, one of the declared purposes of his administration, President Wright announces that the Riviera Country Club has granted the privilege to members to meet in the Clubhouse on the third Friday of each month. Those who wish to play golf may do so for the same green fees paid by members, while those not athletically inclined may engage in bridge, or otherwise amuse themselves—and each other. The Club's facilities for buffet and fountain service will be available, and dinner at $1.00 and $1.50 may be enjoyed.



In order to furnish incentive to the many golfing members, the President has donated a trophy to be contested for under tournament rules, and to be awarded to the winner. The first meeting, and the beginning of the golf contest, has been fixed for March 19. Other meetings will follow in the third Friday of each month thereafter.

This will give the opportunity, said President Wright, "to encourage social intercourse among the members, which is something that members have indicated that they wish most decidedly."

It is anticipated that a large number of members will avail themselves of these unusual opportunities to get together under ideal surroundings.

PUBLIC COOPERATION

"Our efforts must be to unite our forces and to concentrate not only upon our own selfish professional problems, but also upon all important matters in reference to which the public needs and is entitled to our advice, and to take an aggressive part in the solution of those problems. We can only be successful if our association and our affiliated associations put forth a united front. Your officers and trustees take very seriously the responsibilities of acting on your behalf. In practically all instances the trustees have acted only when there has been a clean-cut majority of opinion. I ask that you not only whole-heartedly support the activities of the association and your officers and trustees, but also that you agree in this particular to be bound by the same rule you so willingly agree to in every other field of endeavor—that is, majority rule. If we will do this then, and then only, can we hope successfully to meet the problems continually confronting us.

FRANK B. BELCHER
Senior Vice-President

LUNCHEON MEETINGS

"In order to make us more 'association conscious' we are proposing for your consideration this year, several new activities, some of which I would like to mention at this time.

"If it meets with your approval, and I feel sure it will, we intend to hold bi-monthly luncheon symposium meetings under the direction of our 'Luncheon Committee,' at which there will be discussed topics of vital interest to all of us. The luncheons will start at 12:15 o'clock. The chairman or the specialist chosen to guide the meeting will briefly outline the topic of the day and those present may then have the opportunity to freely discuss it. For the present, at least, the meeting will be held at the Rosslyn Hotel, the first of which is called for March 9th, at which Mr. Joseph Brady, who is an expert on the subject, will outline, and there will be discussed, the topic of 'Recent Developments in the Field of Income Taxes.' The second meeting will be held on March 23rd at the same place; the topic will be 'Pending Proposals of Legislation.' Other meetings and topics will be announced shortly. I think there is great need for such an activity within our association and if the plan proves successful it will be greatly amplified.

SOCIAL MEETINGS

"Believing that it is essential, and in a way following the mandate of our Constitution, to 'cultivate social intercourse among its members,' we are proposing that one night a month there shall be held a social evening at one of the country clubs around Los Angeles. *There will be no program; there will be no speeches.* The purpose will be to afford those of us who wish to enlarge our acquaintance among our fellow attorneys, the opportunity to go to the club, enjoy a buffet dinner, spend the evening playing bridge, poker, gossiping or whatnot. We have contacted several of the clubs and in the very near future will be able to announce the date and the club at which the first meeting will be held. We are endeavoring to arrange that on the afternoon of the evening meeting, any of our members may play golf at the club.

GOLF TOURNAMENT

"The golf committee will very shortly have an announcement that I think will be of great interest to those of us who play golf. This activity is not of itself an important thing, but it does contribute to making a certain number of our members more 'association conscious.' If it develops that there is sufficient interest to create association teams in other sports and activities, for the same reason, we believe it advisable to do so.

COMMITTEE APPOINTMENTS

"In reference to the appointment of committees; the trustees have from time to time been criticized because the appointments each year may seem to be confined to a relatively small group of members of the association. The Board will, I am sure, in considering the appointment of committees this year, endeavor to appoint only members of the association who have not served in the last few years, so that we may rotate the opportunity of active participation in the affairs of the association. Circumstances will, of course, compel certain exceptions. If any of you who receive committee appointments are unable to actively participate, I ask that you notify us as promptly as possible, in order that we may replace you by some other member who is able to perform.

ALLEN W. ASHBURN
Junior Vice-President

SPECIAL COMMITTEES

"This being a legislative year, we shall probably have our usual quota of extra committees and the usual volume of work that legislative years entail, so that those of you who do not receive appointments immediately may rest assured that before long you will have the opportunity of serving.

"I shall recommend to the Board of Trustees the appointment of several special continuing committees which, if my recommendations are accepted, will somewhat broaden the scope of our activities. I hope soon to be able to announce these committees and what I believe they will accomplish. For the present may I assure you that one of these committees will be a special continuing committee to study the judicial system of various countries, particularly of England and Canada, with a hope that we may keep alive our announced program of changing the present method of selecting judges, and that we may make continued progress toward the end that our judges may have a tenure of office consistent with the position they fill, and remuneration worthy of that office. I realize that this is going to be a difficult and long job, but I am convinced that it is one that we must accomplish at all costs. There will be other committees such as a committee to thoroughly investigate our parole system and propose needed changes, a Public Relations committee, and other activities in addition to those which we have always carried on.

OUR LEADERSHIP CHALLENGED

"From the very inception of our great nation attorneys have enjoyed the distinction of being leaders in the nation's civic, economic and political development, and as this is true of national affairs, it has been more pronounced in relation to smaller political subdivisions. I think we as lawyers can contemplate the accomplishments of this leadership of our profession with a great deal of

pride. That leadership is now challenged. We are held responsible for all actual as well as all alleged evils of every phase of our judicial system. Among other things, it is charged that the legal profession does nothing to improve the administration of justice; that the bar is indifferent to its duty to rid the profession of unscrupulous members. The press, periodicals, politicians, even the radio comedians take license with our ethical standing. We even suffer the indignity of members of our own profession who by political accident or otherwise, have obtained a temporary position of prominence, criticize the bench and the bar on the least provocation—frequently without any provocation whatever—never offering a cure or a constructive suggestion. In fact, it has come to such a point that of late I have been wondering if honest, honorable and able men will continue to accept the high office of the bench if such unwarranted, unfair and wholly unjustified criticism continues.

"The layman is prone to magnify the seriousness of many situations and is wholly ignorant of, or unwilling to acknowledge, the efforts that the bar has made and is continuing to make, not only to rid the profession of those proven unworthy and unscrupulous, but also of our efforts to further and improve the administration of justice and our activities in relation to all other subjects with which we have dealt. On the other hand, I am personally of the belief that some criticism is deserved. I am convinced that there is now a greater opportunity as well as necessity for leadership in civic, political and economic fields than ever before, and if we are to justify our profession as well as perpetuate it, we must recognize the crying need for this leadership, and furnish it.

MUST REMEDY EVILS

"In addition to this and fully as important, we must be constantly alert and militant in remedying the evils of our present system of jurisprudence, alert in speeding up and making certain justice, most jealous of any unethical encroachment on the part of any member of our profession, and alive to the necessity of re-establishing ourselves in the public mind. Recognizing the situation and realizing the attitude of the public, we are certainly intelligent, courageous, and tactful enough to meet the situation fairly and firmly. It is *your* association, and it can only accomplish in proportion to that which each of us puts into it. I am deeply grateful for the honor that you have conferred upon me in electing me President. Not only do I fully appreciate this honor, but I also realize the responsibilities which the office entails."

ACTION BY BOARD OF TRUSTEES

Legislation: At a recent meeting of the Board Warren E. Libby, chairman of the Committee on Legislation, made a verbal report concerning the Association's legislative program: All of the Association's proposed legislation had been introduced in the Legislature in form of Bills, he said, with the exception of the recommendation of the Committee on Criminal Law and Procedure, which proposed that a violation of Section 337a of the Penal Code, relating to book-making, bets, and wagers, be punished as a misdemeanor instead of a felony as now provided. Mr. Libby stated he was unable to find any member of the Legislature willing to introduce a Bill to amend said Section 337a of the Penal Code.

He recommended that Bills introduced in our behalf be referred back to the respective committees in order that they may be checked with a view to ascertaining if they are correct and are what the committee intended. This recommendation was approved.

Mr. Libby also recommended that a set of Bills be placed in the hands of a special committee of the Junior Barristers with the request that the committee check the Legislative Digest for (1) any Bills pertaining to the same sections of the law which are affected by Bills proposed by the Association, and (2) if such Bills are found, whether the Association should oppose or favor any of them. The Junior Barrister's Committee on Legislation was asked to undertake the work, and to call to the attention of the Board any bills presented to the Legislature which relate to the practice of the law or the administration of justice.

Legislative Program: President Wright was authorized to appoint a committee to examine pending legislative Bills, which had been reported upon by the Junior Barristers' Committee, and that it be requested to classify the Bills into groups as follows:

1. Those which the Association should actively support;
2. Those which the Association should actively oppose;
3. Those upon which we should take no action.

President Wright appointed the following members of the Association to the committee:

Leo S. Chandler, Chairman, Harry A. Daugherty, C. W. Cornell, Charles E. Donnelly, Robert H. Dunlap, Harry L. Dunn, Kimpton Ellis, Charles E. R. Fulcher, Paul Fussell, John M. Hall, Eugene Breitenbach, Thomas S. Bunn, Jerold E. Weil, Augustus F. Mack, Jr., John M. Hall, Maurice Norcop.

Public Library Lectures: The Los Angeles Public Library, having again invited the Association to conduct a series of lectures in the Library Assembly Room on certain evenings during the first part of 1937, the Board accepted the invitation and the matter will be referred to an appropriate committee with instructions to proceed in accordance with the outline set forth in the communication from the Library. The committee will be requested to keep a record of the attendance at each lecture and to study the entire set-up with a view to improving the program.

Establishment of a Court to Settle Industrial Disputes: The Board authorized the President to appoint a committee to study certain proposed legislation designed to provide a lawful and orderly method of settling industrial disputes, and for a court to hear such disputes, and make recommendations to

Trustees. The Bill referred to was recently introduced in the Legislature by Senator George M. Biggar.

The President appointed the following members to the committee: Hugo H. Harris, Chairman, Frederick Lake, and James P. Keleher.

Report of Committee on Branch Courts: The Committee having made its final report (L. A. Bar Bulletin, February, 1937) the Board of Trustees passed a resolution of thanks to Col. Henry O. Wheeler, chairman, and Herman F. Selvin and Joseph Brady, for their devotion to the work that required much of their time during the past year, and for the completeness and general excellence of the report. It also voted the thanks of the Association to Clyde Doyle, President of the Long Beach Bar Association, L. E. Lampton, County Clerk, and H. A. Payne, County Auditor, for their cooperation with and assistance to the Committee.

Thanks to Junior Barristers: The following resolution was unanimously adopted: Resolved: That the Board of Trustees of Los Angeles Bar Association hereby expresses its sincere appreciation of the splendid and outstanding program presented at the January meeting and the most excellent and successful manner in which the meeting was conducted.

Election of Treasurer: Article V of the Constitution provides in part that "The Board of Trustees shall, at their first meeting after their installation, elect from among their number a Secretary and a Treasurer."

Upon motion, Mr. T. W. Robinson was, by a unanimous vote, elected Treasurer for the ensuing year.

Finances of Bulletin Committee: A communication from Mr. Birney Donnell, Chairman of the Bulletin Committee, was presented to the Board. It informed the Board that the Bulletin will no longer make a monthly charge against the general fund of the Association as the BULLETIN's finances have improved to the extent that it will not, for the present at least, require financial aid. The communication was received and filed, and the Executive Secretary was instructed to address a letter of thanks to Mr. Donnell and the members of his Committee.

Any Suggestions?

***The Bulletin* Committee invites members to offer suggestions, and make criticisms, for the betterment of your monthly publication. Most of all we want contributions of articles by members on subjects of interest and assistance to others in practice. Every lawyer is capable of writing articles on some technical subject, arising out of his own practice experience. Won't you submit such material to the Committee? Send communications to the Bar Association office, 1124 Rowan Bldg.**

The Bulletin Committee.

IS TRIAL WORK OF SUPERIOR COURT INCREASING OR DECREASING?

By L. E. Lampton, County Clerk

To the Bar of Los Angeles County:

I HAVE been requested to make some comments for the benefit of the Bar upon the statistical report made by my office on the work of the Superior Court over a period of years, which report appears in the recently published sixth report of the state Judicial Council, pages 22, 23, 88 and 89.

About a year ago I was called upon by the judges of the Superior Court in Los Angeles county to furnish them a detailed report of a number of items, which information was not available from the previously compiled records of my office nor the data of the Judicial Council.

In particular, I was requested to furnish data concerning three major items: (1) as to the number of contested civil cases actually brought to trial; (2) as to the number of judges available for civil trial work, and, (3) what changes, if any, were occurring in the types of civil litigation filed in my office.

In compliance with this request of the judges, I and a number of my deputies made an analysis of our recorded data over the nine-year period extending from 1927-28 to 1935-36, inclusive.

As to the first of the requested items, the number of contested cases, we resorted to the daily minutes of each trial department over the nine-year period. This data was disclosed: 1927-28, 4236; 1928-29, 3553; 1929-30, 2333; 1030-31, 2057; 1931-32, 4002; 1932-33, 4346; 1933-34, 3003; 1934-35, 3269, and 1935-36, 3231, all of these figures being exclusive of our branch departments.

CONTESTED CASES TRIED

Year	Contested Cases Tried	Civil Trial Departments	Cases per Trial Judge	
1927-28	4236	34.5	12.22	(Jurisdiction of Superior Court
1928-29	3553	29	12.25	(commenced at $1000.
1929-30	2333	20	11.66	
1930-31	2057	17.9	11.49	
1931-32	4002	30.9	12.9	(Master Calendar
1932-33	4346	34.5	12.3	(in operation.
1933-34	3003	28.46	10.55	
1934-35	3269	29.39	11.12	
1935-36	3231	28.73	11.25	

Note 1. Civil trial departments computed by monthly averages.

Note 2. Total number of cases tried and cases tried per judge should be considered in connection with changes in character of cases tried and filed, as shown on graph.

Note 3. Number of cases tried per judge shown as increases in periods when jurisdiction extended down to $1000, and when large numbers of cases, including "dead-wood" cases, nuisance litigation, and cases requiring little time for trial under the new master calendar system forced to trial with the aid of assigned judges.

JUDGES AVAILABLE

In direct connection with this were the figures relative to the number of judges available for trial of these causes. The inquiry revealed that while the court's regularly elected or appointed personnel was 38 judges for the first four years of the examined period, and 50 judges since then, that these bore no relation whatever to the numbers of judges available in several years for actual trial work in contested civil litigation. Wide variances existed due to the assignments of assisting judges by the Judicial Council.

The actual records showed the following monthly averages of available judges in civil trial departments over the nine-year period: 1927-28, 34.5; 1928-29, 29; 1929-30, 20; 1930-31, 17.9; 1931-32, 30.9; 1932-33, 34.5; 1933-34, 28.46; 1934-35, 29.39, and 1935-36, 28.73. It will be noted that these figures reveal in some instances a larger number of available trial departments when the regular personnel of the court was only 38 judges than when this regular personnel had been increased to 50 judges, due to varying assignments by the Council, as mentioned above.

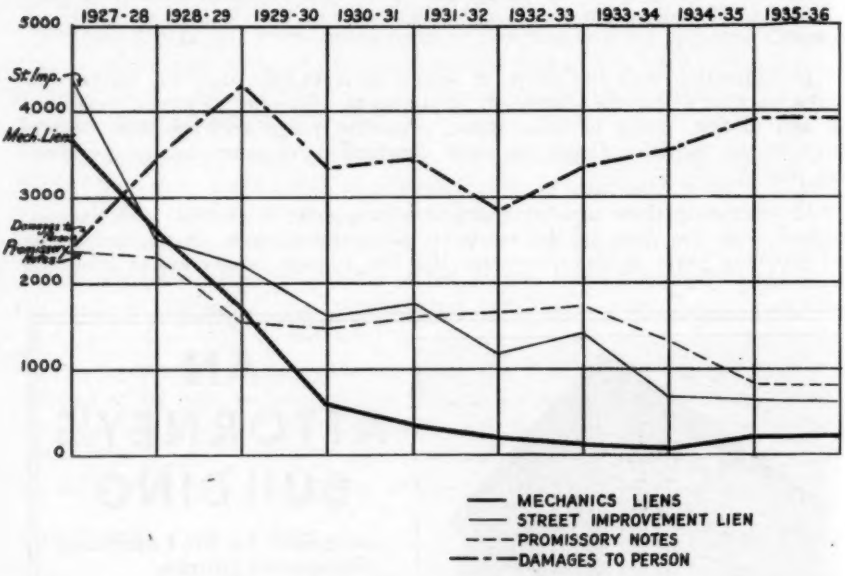
In connection with the above, it should be mentioned that the numbers of judges necessary for the operation of criminal, juvenile, domestic relations, law and motion, order to show cause, presiding judge and appellate departments in the Superior Court remained practically the same during the nine-year period.

In examining these figures of available judges for civil trial work in conjunction with the data on the numbers of contested cases heard during the corresponding years, it was discovered that the average production of contested

cases per department was as follows: 1927-28, 12.22; 1928-29, 12.25; 1929-30, 11.66; 1930-31, 11.49; 1931-32, 12.9; 1932-33, 12.3; 1933-34, 10.55; 1934-35, 11.12, and 1935-36, 11.25.

ESTABLISHMENT OF MUNICIPAL COURT

Our examination disclosed as explanations of these variances the following: That prior to August, 1929, the Superior Court's jurisdiction extended downward to $1000. Since that time, the Municipal Court has had jurisdiction of all cases up to $2000, thus relieving the Superior Court of these matters which, in the main, were more rapidly tried. Next, we discerned that when the master calendar system was inaugurated, coupled with the assistance of a large number of outside judges, the court was able to clear its calendar by forcing to trial nuisance litigation, so-called "deadwood" and matters requiring little more than mere formal proof.



In direct connection with the immediately preceding, our inquiry into the records for the third requested item of information regarding what changes, if any, were apparent in the types of actions filed, disclosed a steadily increasing trend toward the filing of the more serious type of litigation, and the marked decrease in filing of actions which caused relatively little work for the trial departments.

As to the increasing filing of more serious types of litigation, I might point out in particular the figures for damages to person actions, remarking again that since August, 1929, these items for amounts of $2000 and less have been removed to the Municipal Court: 1927-28, 2378; 1928-29, 3465; 1929-30, 4134; 1930-31, 3174; 1931-32, 3218; 1932-33, 2971; 1933-34, 3391; 1934-35, 3608, and 1935-36, 3981.

Demonstrating the decrease in those items mentioned which caused relatively little work for the trial departments, those under mechanics' liens, street improvement liens and promissory notes were especially interesting.

For mechanics' liens: 1927-28, 3880; 1928-29, 2784; 1929-30, 977; 1930-31, 641; 1931-32, 352; 1932-33, 50; 1933-34, 40; 1934-35, 23, and 1935-36, 41.

For street improvement liens: 1927-28, 4329; 1928-29, 2603; 1929-30, 2294; 1930-31, 1780; 1931-32, 1823; 1932-33, 1203; 1933-34, 1432; 1934-35, 865, and 1935-36, 843.

For promissory notes: 1927-28, 2342; 1928-29, 2339; 1929-30, 1576; 1930-31, 1520; 1931-32, 1614; 1932-33, 1624; 1933-34, 1716; 1934-35, 1160, and 1935-36, 921.

DECREASED CIVIL FILINGS

Upon consideration of the foregoing items, and scrutiny of the data fully given in the Judicial Council's published report, which is of too wide import to detail fully herein, it further became apparent that while the gross civil filings over the nine-year period had decreased in a marked degree, that this diminution had no reflection whatever in the actual burden of litigation placed before the court for adjudication.

In recommending to the members of the bar a study of the data published by the Judicial Council, I may state that the conclusions drawn therefrom are that the work of our Superior Court in Los Angeles County is increasing, and that the production of contested cases by trial judges, notwithstanding the increase in more serious types of litigation, is steadily rising.

TO SUE OR NOT TO SUE

SOMEWHERE I read a story of a litigant waiting in his attorney's reception room, whose eye was caught by the motto, *"Suum cuique,"*—let each have his own. He puzzled over it for a while, and finally trasliterated it, "Sue 'em quick," and told his attorney that it was mighty bad spelling! Judging from some of the suits that are brought, the rustic's translation must be that of a good many lawyers. In other words, there are suits that should never have been brought, and likewise defenses that should never be made. If we but remembered that it is the public's time that is consumed in court, that it is paid for by taxes, we might be rather more considerate and thoughtful in filing actions, as well as more expeditious in dispatching them.

We have heard of "sand-bag legislation"; one is inclined to wonder whether there is not also "sandbag" litigation,—cases filed merely because of their nuisance value. No lawyer can afford to file such an action, whether intended merely to vex and harass, or to mulct a few dollars from some hapless victim. Tennyson's line might be rewritten, "Vext with lawyers and harassed with debt", "Vext and harassed with lawyers." The control of democratic government lies in public opinion, and the public opinion of the profession, if unfavorable, shears it of wellnigh all power to direct the course of affairs. Every such action contributes to public disfavor, and can never result in any real profit to the lawyer.

When a client states his facts, the attorney is not an advocate, but a judge. Now is the time to determine, first, is there a right of action or defense? Second, if so, is it worth bringing into court? What are the chances of compromise and adjustment? There will be litigation enough when the conscientious lawyer settles all the controversies he can outside the courtroom. Is it not the general impression that there are many cases crowding our calendars that either should not be there at all, or that would probably yield to friendly negotiation and adjustment?

Always the bar in America has been influential in governmental affairs; never was there more need of that influence than now. Our conduct can greatly increase or diminish it.—F. G. T.

CURBING THE DEMURRER BY STATUTE

Our Judicial Council long since adopted this Rule for our Superior Courts:

> "*Rule 19.*—Any party filing a demurrer * * * shall, unless the time be extended by the Court, or a Judge thereof, serve and file with such demurrer * * * *a memorandum of points and authorities relied upon.* * * * and the absence of the prescribed memorandum may be construed by the courts as an admission that the demurrer is not meritorious."

The adoption of this rule was evidently not intended as an empty gesture, but in practice it has become such. The weakness of the Rule lies in the fact that it merely confers discretionary power on the Court, whereas the exaction of the penalty should be mandatory. The party demurring to a pleading is exercising a mere privilege. He is usually seeking on technical grounds to prevent his adversary from getting to trial on the merits. Why, then, should he not be held to a strict compliance with the conditions imposed upon him? Why should he not be required to state his points of law, and to cite the cases supporting them? And failing to do so, why should it not be mandatory upon the Court to overrule his demurrer and to refuse to consider any points not stated, or upon which no authorities are cited.

Here is a matter which should be dealt with by statute and not by a mere Rule of Court. Rules of Court are usually more concerned with conferring discretionary powers upon the Courts than creating enforceable rights in favor of litigants. The following addition to sections 430 and 444 of the Code of Civil Procedure would do much to improve the situation and incidentally bring about the interment of an ineffective Rule of Court:

> "The party demurring shall serve and file with his demurrer a written statement setting forth specifically each point of law relied upon, and the authorities supporting the same; and no point of law not so stated, or supported by a citation of authorities, shall be considered by the Court in passing upon the demurrer or upon appeal from any judgment of dismissal following the sustaining of the demurrer."—F. N. A.

THE LUNCHEON MEETINGS

ONE of the innovations of the new administration of the Association is the bi-monthly luncheon meetings, the first of which was held March 9, at the Rosslyn Hotel with a very commendable attendance of members to hear Mr. Joseph D. Brady discuss some of the legal technicalities of the Internal Revenue and Treasury Regulations.

Those meetings, as announced by President Loyd Wright, "are intended to and will give an opportunity to those members who wish to express themselves on various propositions of law, and to have the opportunity of discussing these problems with specialists in various branches. Most of us are charged with the duty of advising business men, corporations and other clients, and it behooves us to have a general knowledge of such subjects as Income Tax, Inheritance Tax and Social Security laws. With the present volume of legislation, state and federal, we should seize the opportunity to listen to those who have made a special study of new legislation on these and other subjects."

Members should set apart Tuesday luncheons for these bi-monthly meetings, the programs for which will be carefully chosen. All of us will benefit from the discussions, as well as from the social contacts which such gatherings afford. Watch for announcements.

ISIDORE B. DOCKWEILER BECOMES TRUSTEE

One of the deans of the Los Angeles Bar, Isidore B. Dockweiler, known to practically every lawyer in Los Angeles County, and to most of them throughout the State, was unanimously elected a member of the Board of Trustees to fill the unexpired term of the office previously held by Mr. Allen W. Ashburn, who became Junior Vice-President for the ensuing year.

THE PHYSICIAN AND THE LAW

By Leon R. Yankwich, J. D., LL.D., United States District Judge

NOTE: The subject of the relation of the physician and the law has always been one of common interest to both professions. This has been carried into practice by the Los Angeles Bar Association and the Junior Bar Association, through their method of inaugurating a yearly joint medical-legal meeting, at which problems of common interest to both professions are discussed.

In the article which follows, Judge Yankwich discusses some of the points at which the professions of law and medicine touch in the light of California cases. It is the substance of addresses delivered before various medical groups in Los Angeles County.

FATE seems to have thrown the professions of law and medicine into fruitful contact, almost since their very beginning. The contact arises from the fact that both are learned professions, and both deal with the ills of human beings. And while the art or science of medicine is the older,—ever since organized society has come into being,—law, as a form of social control, has affected medicine.

In the modern legal world, the contact between law and medicine is greater, because of the limitations imposed by society through law upon the exercise of the profession, the manner of its exercise, and the use which law makes of medicine in the solution of some of its problems.

It is proposed to discuss briefly some of the interesting problems arising out of this contact between law and medicine.

I.

THE RIGHT TO PRACTICE

A trite definition of the physician or surgeon states that he is one who is experienced in the art of healing or curing the disorders of the human body.

"They that are whole," said Jesus, "need not a physician; but they that are sick."

We need not discuss the historical development of the profession, or the constant broadening of social control over it. The profession itself has been chiefly instrumental in securing, in its own interest, and that of humanity, the strictest regulations. They aim to weed out charlatanism and quackery. From a legal standpoint,—from the earliest times,—courts have upheld the right of society, through its legislative bodies, to regulate the practice of medicine and surgery. These regulations have had as their chief aim the protection of public health,—which is always a matter of social concern. The methods of achieving this, which courts have upheld, have dealt with educational requirements and standards, aiming to establish a minimum standard of skill and learning, as a prerequisite to the exercise of the science or art of healing.

They have also upheld classifications, and exemptions, even in those cases where the method adopted did not meet universal approval. Thus in upholding the provisions of the California Act of 1911 which allowed the issuance of a

certificate to physicians who had practiced a special branch of medicine for a number of years, the District Court of Appeal said:

> "It is conceded that the act of the legislature may not have been the most expedient or salutary, but the courts are not concerned with the good or bad policy exercised by that branch of the government. It is not the province of the courts to inquire into the motives and policies which may have actuated the legislature in passing a law—except insofar as may be necessary to aid them in this correct construction—nor to signify their approval or disapproval of its acts, provided the legislative body has kept within constitutional limits." (*Bohannon v. Board of Medical Examiners,* 24 Cal. App. 214, 220.)

Upon compliance with the legislative requirements and the acquisition of the right to practice, the practitioner acquires a valuable property right, and not a mere shadowy privilege. Courts will protect and secure him in the possession and enjoyment of this right,—even against arbitrary legislative enactments. So, while courts have upheld the fixing of strict rules of ethical conduct, they have subjected them to the test of definiteness. So when the Legislature of California (in the law of 1901) declared unprofessional conduct to consist of

> "all advertising of medical business in which grossly improbable statements are made,"

the Supreme Court of California invalidated the provision. The court said (*Hewitt v. Board of Medical Examiners,* 148 Cal. 590):

> "The right which a person possesses under the constitution and the laws to practice his profession as a physician and surgeon cannot be made to depend upon a provision of a statute as vague, uncertain, and indefinite as is the provision we have been considering. If a physician's license is to be revoked for 'grossly improbable statements'; if he is to be deprived thereby of his means of

livelihood, of his right to practice a profession which it has taken him years of study and a large expenditure of money to qualify himself for, on the ground that he has made 'grossly improbable statements' in advertising his medical business—it is requisite that the statute authorizing such revocation define what shall constitute such statements so that the physician may know in advance the penalty he incurs in making them. It is an easy matter for the legislature to declare what statements in the advertisement of medical business shall be deemed 'grossly improbable,' and it must do so, and not leave it to a board of medical examiners after the publication is made to determine in its judgment whether the statements were or were not 'grossly improbable,' and according to its particular view of the matter revoke or refuse to revoke the license. The right to practice medicine cannot be made to depend upon such a vague, uncertain, and indefinite provision."

Yet our courts later upheld the provision of the 1917 Act which included among the definitions of unprofessional conduct,—one which is still in it and which read:

"All advertising of medical business which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, and so be harmful or injurious to public morals or safety."

This provision, the court said, did not, as did the one in the law of 1901, penalize statements without regard to their truth. On the contrary, the court said:

"Under these provisions a certificate could not be revoked unless it was first determined by the board that the advertising complained of was in fact false and was intended or had a tendency to deceive the public or impose upon credulous or ignorant persons, and so be harmful to public morals or safety." (*Glass v. Board of Medical Examiners*, 50 Cal. App. 389, 392. See, *McPheeters v. Board of Medical Examiners*, 103 Cal. App. 297.)

II.

REVOCATION OF THE RIGHT TO PRACTICE

Generally, the law has protected the public by holding the practitioner to a high degree of professional and ethical responsibility. This applies to the practice of medicine, or of any of the other schools of healing whose graduates are entitled to the license of physician and surgeon. The provisions of the Medical Act of California may serve as an illustration of the acts which are denounced as unprofessional conduct. Briefly they may be stated: Procuring, aiding or attempting abortion; or violations of the Act; betraying professional secrets; false advertising, likely to impose upon the credulous; revocation of license in sister state; advertising relating to menses; conviction of a felony or of an offense involving moral turpitude; conviction or compromise under the Harrison Narcotic Act; bartering in diplomas; impersonating another in an examination; an adjudication of insanity; narcotic addiction; habitual intemperance; trafficking in narcotics; personating another practitioner or allowing another to use one's certificate, or allowing an unlicensed or suspended person to use one's name, and other acts connected with the misuse of the license to practice; use of forbidden symbols; and employment of cappers or steerers. (Deering's General Laws, Vol. 2, pp. 2364-2366.)

It is evident even from this very incomplete epitome that while the standard of ethical conduct is high, it is not rigorous or unfair. Certainly, no layman would want to trust a healer who did any of the acts denounced by this statute. So the law is eminently fair.

It is also eminently fair in allowing courts to review the acts of the Board of Examiners who,—after a trial, upon due notice, and after hearing of witnesses in open session,—have deprived a physician of his right to practice.

In reviewing the evidence presented before the Board, courts adopt the principle which applies to all bodies exercising quasi-judicial functions. Their

findings will be upheld if there is any substantial evidence to substantiate them. When there is conflict of evidence, we will not endeavor to resolve the conflict in a manner different from that of the Board. As the court said in a dental case:

> "There must be a physical improbability, or such a state of facts that nothing need be assumed, nor any inference drawn to convince the ordinary mind of the falsity of the story." (*Winning v. Board of Dental Examiners,* 114 Cal. App. 658, 664.)

However, courts will not sustain accusations based upon mere conjectures. (*Randall v. Board of Medical Examiners,* 110 Cal. App. 61; *Osborne v. Baughman,* 85 Cal. App. 224).

In 1930 I was called upon to decide a most interesting and novel question. A physician had been acquitted of a charge of murder, resulting from an abortion. The Board of Medical Examiners, notwithstanding the acquittal, proceeded to try him for unprofessional conduct, found him guilty of the abortion and revoked his license. It was argued before me, in an action against the Board, that the acquittal in the criminal case should bar his suspension. I refused to reinstate him. The decision was upheld by the higher courts in November, 1933. (*Bold v. Board of Medical Examiners,* 75 Cal. App. Dec. 428.)

At the time the decision was rendered there was no precedent in California. I found, however, similar rulings in a New York case, dating back to 1833, and in a Wisconsin case decided in 1916. The ruling may seem harsh. And yet when you consider that the proceeding for revocation is not criminal, is intended chiefly to protect the public,—and *not* to punish the physician,—it is apparent that an acquittal by a jury is not conclusive of the question whether the physician should continue to practice his profession. Evidence insufficient to

overcome the presumption of innocence and the doctrine of reasonable doubt, may yet be sufficient to satisfy professional brethren of the practitioner and a court of review, that his conduct, even though not criminal, was so unprofessional as to warrant the revocation of his license to practice.

So I wrote in the opinion:

> "It may be conceded that the right to practice medicine is a valuable property right, of which a person upon whom it was once conferred cannot be deprived without due process.
>
> "It is also elementary that the acquittal is bar to another criminal proceeding for the same offense. But, there are many instances where more than one consequence may be attached to an act. The State may exact more than one penalty. And if the penalty be not criminal, an acquittal of a criminal charge is not a bar to the exaction of the other penalty. . . ."
>
> "We fail to see," the opinion continued, "how the question of *res judicata* can arise. We have two distinct proceedings, two distinct consequences which the law makes flow from one act: the one criminal to determine whether a crime against the state has been committed, the other 'to determine the fitness of a physician' to continue to practice and to mete out a judgment 'not intended for the punishment of the individual' but for the protection of society and of the medical profession."

This reasoning was sustained by the higher courts. (*Bold v. Board of Medical Examiners,* 133 Cal. App. 23, 23 P.(2) 80.)

III.

THE MANNER OF EXERCISING THE PROFESSION

As we have seen, the law holds the physician to the highest standard of professional probity. In this, the law may seem rigid. And it should be.

But when the law steps in to hold the physician accountable, in damages, for negligent acts in the exercise of his profession, it is very fair. It requires no impossibilities. It does not even require an abstract standard of skill. It requires a skill limited in time, and in character. Briefly stated, the fundamental principles governing liability for negligent acts on the part of the physician or surgeon are as follows: The physician is not a guarantor or insurer of cure. By accepting employment, he merely undertakes to use the average skill of other physicians in the same or similar localities. A mistaken diagnosis does not constitute malpractice, in the absence of negligence.

The following quotation from a case decided by the Supreme Court of California in 1928, is a good summary of the law on the subject (*Patterson v. Marcus,* 203 Cal. 553):

> "The record presents a case of mistaken diagnosis by a reputable physician without the incidents of carelessness or unskilfulness necessary to constitute actionable negligence. There is an entire absence of evidence that the treatment prescribed on the original diagnosis was improper. A physician is not held to a higher degree of responsibility in making a diagnosis than in prescribing treatment. (See *Brewer v. Ring,* 177 N. C. 476 (99 S. E. 358, 364).) When due care, diligence, judgment, and skill are exercised a mere failure to diagnose correctly does not render a physician liable. (*Jaeger v. Stratton,* 170 Wis. 579 (176 N. W. 61).) A mistake in diagnosis in the present case was alleged and proved and is conceded to have taken place. But it was not only necessary for the plaintiffs to prove such mistake, but also that the mistake was due to failure to exercise ordinary care, diligence and skill in making the diagnosis. (*Schumacher v. Murray Hospital,* 58 Mont. 447 (193 Pac. 397, 403).) Mere proof that the diagnosis was wrong would not support a verdict. (*Edwards v. Uland,* 193 Ind. 376 (140 N. E. 546, 548).) It has been held in this state that the implied contract on the part of the physician is that he possesses that reasonable degree of learning and skill possessed by others of his profession, and that he will exercise reasonable and ordinary care and skill in the application of that learning to accomplish the purpose for which he is employed. (*Houghton v. Dickson,* 29 Cal. App. 321 (155 Pac. 128).) As to what is or is not the proper practice is uniformly a question for experts and can be established only by their

testimony. (*Perkins v. Trueblood,* 180 Cal. 437, 443 (181 Pac. 642); *Houghton v. Dickson, supra.*) There was in the present case no expert evidence as to what method or means, in the exercise of ordinary care and skill, should have been employed to determine the presence or absence of pregnancy. On the record presented it is reasonable to conclude, in harmony with the holding of the trial court, that there was no showing of negligence on the part of the defendant in making the mistaken diagnosis, having in mind the standards of proof required."

This summary indicates that, in modern times, the law takes a reasonable attitude towards the practitioner of the healing art. It does not punish him for failure to cure, in the absence of negligence. The law has not always been so charitable. The oldest code of the world, the Code of Hammurabi of Babylon (dating from 2250 B. C.), while doing nicely by the physician by regulating his fees, punished him severely for his failures. Here are some of the provisions of that famous Code, taken from a new translation (J. M. Powis Smith: The Origin and History of Hebrew Law, pp. 211-212):

"215: If a physician make a deep incision upon a man (*i. e.,* perform a major operation) with his bronze lancet and save the man's life; or if he operate on the eye socket of a man with his bronze lancet and save that man's eye, he shall receive ten sheckels of silver.

"216. If it were a common man, he shall receive five sheckels.

"217: If it were a man's slave, the owner of the slave shall give two sheckels of silver to the physician.

"218: If a physician make a deep incision upon a man with his bronze lancet and cause the man's death, or operate on the eye socket of a man with his bronze lancet and destroy the man's eye, they shall cut off his hand.

"219: If a physician make a deep incision upon a slave of a common man with his bronze lancet and cause his death, he shall substitute a slave of equal value.

"220: If he operate on the eye socket with his bronze lancet and destroy his eye, he shall pay silver to the extent of half his price.

"221: If a physician set a broken bone for a man or cure a sprained tendon, the patient shall give five sheckels of silver to the physician.

"222: If it were a common man, he shall give three sheckels of silver.

"223: If it were a man's slave, the owner of the slave shall give two sheckels of silver to the physician."

IV.

THE PHYSICIAN AS AN ADJUNCT TO THE COURT

The physician is a valuable adjunct to the court. This fact was recognized early in our jurisprudence. Physicians like to quote the following statement made by Mr. Justice Saunders in an English case in 1553, justifying the employment of a medical expert:

> "If matters arise in our law which concern other sciences, we commonly apply for the aid of that science which is concerned therein, which is an honorable and commendable thing in our law, for thereby it appears that we do not despise all other sciences than our own but we approve them and encourage them as things worthy of commendation."

Thus the help of the physician has always been welcome in courts. That prejudice has arisen against the testimony of the physician, when he appears as an expert, is common knowledge. I think the prejudice may be traced to the great divergence between the opinions of experts in mental diseases. They occur in important will cases, and in criminal cases,—under the plea of insanity. The difficulty in criminal cases is often traceable to the difference between the legal and medical concepts of insanity. In law, insanity implies inability to recognize the wrongfulness of an act. Our concept is based upon outmoded mental science or phychology. And when the physician and the lawyer speak of insanity they do not speak of the same thing. With the physician and psychologist, mental derangement may be entirely unconnected with any doctrine of responsibility. More, according to the tenets of modern psychology, an ability to distinguish between the rightfulness and wrongfulness of an act, does not necessarily imply either wilfulness or responsibility. The psychopathic personality, which expresses itself in criminality, is the very embodiment of irresponsibility to the physician. And yet, in law, we hold him responsible. The distinguished Dr. Lewis M. Terman, of Stanford University, has pointed out the difficulties which arise from these facts. (Psychology and The Law, in Los Angeles Bar Association Bulletin, Vol. 6, No. 5, January 15, 1931). He writes:

> "It is generally agreed that in this country expert testimony is a disgrace to everyone concerned,—to the court, to the person who gives it, and to the profession he represents. Not that expert testimony is *per se* unreliable; it is the system that makes it so. In the first place, there is no scientific basis for the selection of experts and the result is that many of them are grossly incompetent to testify on the issues at stake. Secondly, they are chosen and paid by the litigants, with the inevitable result that each takes a partisan attitude and tries to give his employer his money's worth. In the third place, they are subject to a cross-examination which is usually unfair and sometimes outrageous. Finally, the examination of an expert witness always includes questions that force answers unfairly into rigid categories, as when the accused must be classified, as definitely sane or insane, feebleminded or normal. The hypothetical question —'Did this person know the nature and consequences of his act?'—rests upon the ignorant assumption that insanity involves only disturbances of the knowing faculties; although even the freshman student of psychology understands that it is oftener a disturbance primarily of the emotional or volitional life. *The legal profession knows nothing about morbid compulsions and nothing about degrees of sanity or grades of mental deficiency.*"

The differences between experts are not so much differences in diagnosis, as disagreements as to the legal responsibility for an act. Two experts or groups of experts may give the same diagnosis. And yet, appearing for different sides, they may draw different conclusions, as to whether, by reason of the diagnosis, the person was or was not legally responsible. The late Dr. Arnold Jacoby, who was, for many years, Director of the Psychiatric Clinic of the Recorder's Court in Detroit, stressed this fact in a short article which appeared some years ago in the *Mental Hygiene Bulletin* (Vol. VIII, No. 3, March, 1930.)

After detailing a conversation between himself and an attorney, wherein,—upon the basis of a finding that a person accused of crime was "not right mentally,"—he refused to conclude that he was legally insane or irresponsible for the act, Dr. Jacoby wrote:

> "The so-called 'battle of experts' of which we have heard so much recently, and which has been charged against the experts, is not a 'battle of experts' primarily, but is only a part of the gladiatorial contest between attorneys on questions of highly irrelevant and arbitrary legal definitions. Two perfectly honest, sincere, highly trained psychiatrists may each examine the case of John Smith, and come to the same diagnosis of his case, namely, a mild degree of alcoholic deterioration with hysterical manifestations. One of these honest experts may perfectly honestly testify that John Smith is insane, and therefore, irresponsible for this particular robbery, because he has a mental disorder, and therefore, not normal or sane. The other expert, equally honest, equally

sincere, and with the same understanding of Smith's diagnosis, may testify that John Smith is sane and responsible, because, although he has a disordered mind, the disorder is not of the nature or amount to excuse him on the basis of the arbitrary legal right-and-wrong test. These two experts would appear then to take widely divergent views of John Smith's mental state, when as a matter of fact they are totally in accord as to the diagnosis of the case, and in total accord as to the best treatment for the case, with the view of preventing further crime on his part. So long as attorneys and the legal machinery are more interested in matters of legal definitions, than in the protection of the community against crime, such spectacles will be with us.

"This conscientious nature of the modern criminal trial is the underlying cause, in the overwhelming majority of cases, of disagreement between experts. The scientist is primarily interested in causes and effects. With reference to delinquency, he is interested in the causes of the delinquency, and in treating those causes so the delinquency may be removed. He is not primarily interested in attaching labels of 'sanity' or 'insanity' or of 'responsibility' or of 'irresponsibility' to the offender. However, he is often dragged into the position of doing just that by the very nature of our criminal trials."

There are, no doubt, venal members of the medical profession who sell their opinions. But I believe that, on the whole,—the differences of opinion arise from the same reasons that differences of opinion may arise between other experts. Lawyers are proverbially in disagreement not only over the law applicable to certain facts, but also as to the meaning of decisions. I have had two physicists from two Southern California Universities express fundamentally opposite opinions as to whether an electric light pole could carry a certain weight, as required in a set of specifications.

So we do not expect physicians to agree in diagnosis,—much less in prognosis. Differences of opinion,—even when the knowledge and experience of the physicians are equal, may be accounted for by differences in the factual bases for the opinions. I think this accounts for many seemingly irreconcilable opinions. I think intelligent lawyers and judges have no quarrel with reputable physicians upon that score. All we expect of them is to give us an *intelligent* opinion, based upon an *honest* judgment.

California has made it possible to take the odium off the medical expert in both civil and criminal cases by providing for the appointment of experts by the court,—to investigate facts and testify. You are familiar with the section. (Code of Civil Procedure, Section 1871).

I think no other enactment has done so much for the vindication of the expert. Judges use it very freely and satisfactorily. While on the Superior Court, in a personal injury case, I settled a disagreement between two physicians,—one of whom asserted and the other denied, that the injured person was suffering from traumatic neurosis,—by appointing an internalist who found, and demonstrated with X-rays, that the litigant was suffering from something entirely unconnected with any trauma. In another case, the permanency of an injury to hearing was determined in like manner. In an important criminal case, tried in the Superior Court, three internalists whom I appointed to examine a convicted man who was seeking release on bail pending appeal, upon

the ground that his stay in jail was injurious to his health,—reached a decision that jail was really an excellent place for his ailment. How the public looked upon the action of these men in giving their sincere opinion may be gathered from the following comment appearing in the *Los Angeles Record* under date of June 1, 1932. The comment was by Dean Richmond (the pseudonym under which Mr. H. B. R. Briggs, the editor of the newspaper at the time, wrote his personal column, "Brass Tacks."). It read:

> "It is refreshing to see physicians honestly disagree with their professional brothers, as in the matter of Richfield Wrecker Talbot's plea for bail. Strengthens our faith in the integrity of a profession, the members of which too often cover up each other's blunders, at least by silence."

This comment justifies my statement that the intelligent public does not expect an illusory unanimity of opinion upon the part of physicians. They respect *honest* disagreement. If they have not respected such disagreements in the past, it is because they were not convinced that they were honest.

So, in this (as in many other matters), intelligent education,—and intelligent action,—upon the part of the physician, will solve the problem.

Law, both through legislation and court interpretation, will continue to cooperate with the physician, as it has done in the past,—to help him carry on his noble calling. It will call upon him for aid, when necessary.

As I look at the process of socialization now going on, I feel that the physician stands the best chance of all professional men of surviving, as an individual.

Public esteem of him is growing, at a time when other professions,—not even excluding the clergy,—are losing it. Socialization may reduce the physician's field. Individual emoluments may also be reduced. But there will be room left for great achievements,—whether performed individually, or through a group,—for the state or for the individual.

So, be of good cheer.

Ailing humanity has still great need of you. And I am certain that you, and those who are to follow you, will continue to supply this need, in the spirit of the great physicians of the past.

NEW MEMBERS ENROLLED

Following Los Angeles lawyers have become members of the Association since January 1, 1937:

Walter C. Allen
Charles Hudson Boynham Cox
Robert Pusey Hastings
Leonard Herwin
William D. Behnke
Clarence Stephens Brooks
Harrison M. Dunham
Bates S. Hines
Martin T. Kristovich
David Lynn
Gilhome W. J. McMillan
Maurice Goodstein
John W. Holmes
Rodney Johnson
Winthrop T. Johnson
Robert Landon Moore
Franklin W. Woodhead
Bernard Lawler
William Rhodes Hervey, Jr.

JUNIOR BARRISTERS' NEW OFFICERS

IN harmony with the provisions of the By-laws, the Junior Barristers Committee addressed a communication to the President under date of February 26, 1937, advising him of the election of officers for the ensuing year as follows:

James Ingebretson,	Chairman,
Shirley Ward, Jr.,	First Vice-Chairman
Lawrence Drumm,	Second Vice-Chairman
W. Joseph McFarland.	Secretary and Treasurer

The Board of Trustees voted to confirm the election.

WOMEN'S JUNIOR COMMITTEE OFFICERS

AT its February meeting the Women's Junior Committee elected the following officers for 1937:

Chairman, Harriet Geary; First Vice-Chairman, Ruth Bard; Second Vice-Chairman, Frankie Brile; Secretary, Pauline Weinstein.

ARBITRATION COMMITTEE REPORT

During 1936 the Arbitration Committee, Clifford E. Hughes, Chairman, disposed of eight cases carried over from 1935, and seven new cases submitted for consideration. Two cases were referred to the State Bar, and one was withdrawn. In two cases an award in favor of plaintiffs, and one in favor of defendant, was made. Eleven cases were dismissed, principally because of failure of complainant to sign an arbitration agreement.

THE CITY'S LAW DEPARTMENT

By Ned Marr, of the Los Angeles Bar

IN the every-day bustle of legal business, the fact is often lost sight of that within the bounds of Los Angeles there exists one of the three largest law offices in the United States. It is an office which engages approximately 65 attorneys and has a total office staff of 130 persons. It is an office which handles both civil and criminal work. This office is the City Attorney's office, and is headed by City Attorney Ray L. Chesebro.

Reorganization has resulted in the reduction of appraisers' cost in eminent domain proceedings. Formerly such appraisers received $50 per day for court work and $25 per day for field work. In 1933 this was reduced to $40 and $20 per day, respectively. The saving was further increased by a change of policy in dealing with property owners. Formerly it was the custom to file complaints, including every parcel of land needed for a right of way, without making any effort to determine whether or not the property could be purchased in an amicable way. As a result, the appraisers employed by the City on a fee basis appraised every one of the parcels involved, regardless of any possibility of purchase. Under the present policy the City Right of Way and Land Agent endeavors to purchase the property at a reasonable value. In many cases fifty to seventy-five per cent of the property owners settled or released their claims without being involved in legal proceedings and without the necessity for expensive appraisal of their property. A salaried appraiser of the Right of Way and Land Agent handles the necessary appraisals where settlements are made. Where settlements are found to be impossible, and professional appraisers must be employed, the public appraiser can still serve as one of the experts before the court, thus reducing the cost of appraisers in court cases by a substantial percentage. It is not feasible to use the salaried appraisers in all cases because of their close connection with the City. Even though the City appraisers are correct, the jury might not believe them as coming from an interested party to the lawsuit, unless substantiated by the estimates of outside appraisers.

By maintaining an office to which all injured employees of the City report whenever possible immediately after injury, compensation costs have been cut approximately 40%. A nurse is employed to give minor first-aid relief, at which time complete reports can be secured concerning the accident. From July 1935 to July 1936 there were 2686 visits to this office for first-aid treatments. The total number of injuries reported for the eleven months from January 1, 1936, to November 30, 1936, were 1152. Compensation was paid in 164 of these cases and medical services were provided by the City in 734, the total cost for compensation and medical service being $41,537.26. In connection with compensation matters, there were 41 appearances in the Superior Court, 89 in the Municipal Court, and 74 appearances before the Industrial Accident Commission. One hundred claims made for compensation were rejected on the ground that they did not arise out of the course of employment or because the employee refused medical treatment.

Since 1933 a concerted effort has been made to close out cases which have been carried on the docket over a period of ten years. Approximately 100 such

cases have been disposed of during the current year by procuring dismissals for want of prosecution, through stipulation with opposing counsel, and by securing dismissals by the process of setting such cases for trial. Several of these old cases were quiet title suits instituted against those who had squatted on City lands. In the case of *Forrester v. City of Los Angeles* a judgment was had for the City in an action which had been pending for over twenty years.

CODIFICATION OF ORDINANCES

A reorganization task of great proportion was that carried on in the codification of the penal and regulatory ordinances of the City of Los Angeles. Through such an activity the chaotic condition of the City's laws was clarified. The codification comprised 2,419 typewritten pages accompanied by an index of 263 pages. This represents a consolidation in accurate form of the substance of some 77,000 ordinances. There was only $350 appropriated by the Council for the conducting of this work, and for this reason assistance was obtained from both the S.E.R.A. and the W.P.A. Several deputies and the clerical force in the City Attorney's office devoted night work and overtime for a long period to complete the task. The Municipal Code is now in bound form and has been in effect since November 11, 1936. This code has become the invaluable friend of the various departments of the City in addition to the many citizens it is serving. Time which was spent in searching for applicable penal ordinances is now eliminated, and the cost of government reduced as well as efficiency increased. The completed code has a table of contents, a cross reference of ordinances to corresponding code numbers, a list of active ordinances, which were not codified, and a complete index. New code sections may be added at will in their proper places within the code without disrupting the existing code section numbers by the use of a decimal numbering system. Through the work of reorganization, it was brought to the attention of the codifiers that there existed an apparent need for additions to or deletions from existing regulations. Through helpful suggestions from many members of the various departments, the redrafting of these ordinances into code form resulted in changes in the text of ordinances, but leaving the effect the same as it had been and clarifying matters and making them susceptible of interpretation.

Another step forward was the establishment of a new departmental division, known as the claims division, which received public liability claims other than for automobile liability. The records show that during the past year there were 151 unlitigated claims received, of which 126 were denied and 11 settled; a few remaining to be completed. The total amount represented by the prayers in the unlitigated claims was $937,440.30; the total amount prayed in the claims which were settled was $27,291.30; the total amount for which settlement was made was $3,343.50.

CRIMINAL DIVISION

In connection with the criminal division of the City Attorney's office, there are several elements of reorganization which are noteworthy. With the assistance of the Bureau of Budget and Efficiency of the City of Los Angeles a new system was installed in the criminal division to keep a true and correct account of the filing of all complaints and the status thereof, which system is designed to be one of three to be kept jointly by this office, the Police Department and the Criminal Clerk's office of the Municipal Court. The latter two have not as yet been set up, but when they are, it will coordinate the misdemeanor records of the three offices to serve as a check one against the other. Under this present system a scientific and ready reference to each case and the status

thereof is now available, and the condition of the record, that is, whether the same is up to date or not, is always visually apparent.

Also in the physical set-up of the criminal division, practically all of the complaints of the public were formerly heard by deputies sitting on high stools behind a tall counter, at which the public was interviewed. This counter was in the main reception room, and all of the facts surrounding the matter about which the citizen was complaining were discussed publicly in the presence of all the people waiting, the result being that in most instances the complainant felt he was not talking to an attorney but to some clerk in the office. The phychology was anything but beneficial to any of the parties concerned. However, this situation was quickly alleviated by the construction of three consultation booths, each equipped with electrical signaling devices, a desk and chairs for both the deputy and the public. This permits the proper atmosphere for private conversation and places it upon a professional basis.

THE JOINT TENANT A POOR CREDIT RISK

IN a recent decision[1] the District Court of Appeal, Second Appellate District, upholding an order of the lower Court sustaining exceptions to the sufficiency of an undertaking on appeal executed by a surety whose property was held in joint tenancy with another, said:

> "Circumstances may be such that a surety whose assets are all held in joint tenancy would be sufficient on an undertaking on appeal, while under other conditions a surety, all of whose assets are held in joint tenancy, would be insufficient. For example, assume a surety twenty-five years of age, in good health, engaged in a non-hazardous occupation, owning in joint tenancy assets of a clear value of $100,000, executing an undertaking on appeal in the sum of $500.00. *Clearly such a surety would be acceptable.* * * *" (Italics ours.)

It may, of course, be conceded, that a person "25 years of age, in good health, engaged in a non-hazardous occupation" would be a good risk for a life insurance company, which for a compensation based on the law of averages will assume the risk of his untimely death. But why should a successful litigant be obliged to forego a present ability to collect his judgment and to accept as security an undertaking executed by a surety whose death, pending the determination of the appeal, would automatically strip him of *all* of his property?

In view of the growing popularity of joint tenancies in California there is here a field for necessary legislation. A statute, providing that in determining the sufficiency of any undertaking required by law property held in joint tenancy by an individual executing the undertaking shall not be taken into consideration, would seem desirable. Better still, why not protect the interests of creditors, and also of heirs, all to often deprived of their rights as a result of the creation of joint tenancies, by following the lead of other States in providing[2] that the interests of joint tenants,—

> "shall not accrue to the survivors, but shall descend or pass by devise, and shall be subject to debts or charges and be considered to every other intent and purpose as if such joint tenants had been or were tenants in common."

—F. N. A.

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2 85 A. L. R. 275.